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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/851,483
Filing Date: May 08, 2001
Appellant(s): JOHNSON ET AL.

_____
Victor F.Souto
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/30/08 appealing from the Office action

mailed 01/29/08.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,790,642	Taylor	08-1998
6,161,099	Harrington	12-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1.　　　The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

　　　obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2.　　　Claims 46-51, 53-67, 69-71, 82-88, 90-103, 118-121, and 123　are rejected under

　　　35 U.S.C. 103(a) as being unpatentable over Taylor et al (Taylor hereinafter, US

　　　PAT:5,790,642) in view of Harrington (US PAT: 6161099).

Re claims 46. Taylor discloses a method for creating a bidding process among

telecommunication providers (i.e., telecommunication service centers or service

centers, see fig.1, also see the summary of the invention) in which a moderating

computer (the moderating computer as recited in the claim is construed to mean the

originating service center in the reference, see col.5 lines 18-23. The examiner further

contends that the originating service center has a computer that moderates the bidding

process) collects bids from at least two telecommunication providers, processes the

bids and designates at least one provider of the at least two telecommunication

providers to provide telecommunication service (i.e., In general however, assemble bid

request block 403 will generate a data structure which includes all of the information

required by the bidding service center, previously described in order to generate their

respective bids, see col.7 lines 50-col.8 line 30);

a. in the Moderating computer, receiving the bids to provide telecommunication service

over at least one route, or at least one route segment, on at least one

telecommunication network, processing the bids to produce processed bid data (see

col.5 lines 19-30), and storing the bids and the processed bid data in a data base of the

Moderating computer as first bidding data (see col.8 lines 54-56, also see fig.4a

element 408)

c. in the Moderating computer, designating at least one Provider of the least two

telecommunication providers as a first designated provider to provide

telecommunication service over the at least one route or the at least one route segment,

on at least one telecommunication network (i.e., After the bid request is transmitted, the

originating service center then awaits arrival of the bids from the respective bidding

service centers. First, the bid timer and bid counter (explained more fully later herein)

are both initialized at block 405. The bid timer and bid counter are intended to inform

the originating service center if and when it has all of the information from the other

bidding centers which it needs to **award the job to the lowest cost service center.**

Specifically, and by way of example, the originating service center should award

the job to the lowest bidding service center when any of the following occurs (i) it

has received the bids from all of the service centers; (ii) the maximum time to receive

such bids has expired, even if all bids have not yet been received or (iii) any bid is

received which is below a predetermined threshold which is deemed low enough to be

acceptable. Turning to decision point 406, the bid time is calculated to be the roundtrip

time for the bid request to be transmitted from the originating center to all of the bidding

centers, and for the bidding centers to return their bids to the originating center, see

col.8 lines 1-65, also see col.9 lines 1-35, see fig.4b element 416, also see col.5 lines

19-29 "**After receiving all of the bids, the originating service center 102 compares the bids and selects the lowest bidding service center to make the call.** An instruction, or "contract", to make the call is sent to the lowest bidder. The information required, including any facsimile data to be transmitted, is then sent to the lowest cost center via the appropriate ones of dedicated lines 105-108 and 117-118 and the call is then completed via the PSTN portion associated with the lowest cost service center. Optionally, an acknowledgement may be sent from the lowest bidding service center to the originating center indicating that the call has been serviced."),

d. in a computer adjunct to at least one telecommunication switch, performing at least a portion of the processing or communication functions of the moderating computer (see col.4 lines 10-50). Taylor does not explicitly disclose b. in the Moderating computer, transmitting at least a portion of the first bidding data to at least a portion of the at least two telecommunication Providers, but Taylor does mention that the originating service center transmits bid request to the telecommunication providers (see col.8 lines 1-50). Thus, since bid request and bidding data are nothing but data, and presuming the bid time is not expired, originating service center can obviously transmit a portion of the bidding data already received from the telecommunication service centers back to the telecommunication service centers for correction. A secondary reference, Harrington discloses transmitting at least a portion of the first bidding data to at least a portion of the bidders/users (i.e., after the user selects the submit button and the bid is verified as conforming to the bid parameters, the bidder is presented with a confirmation screen, ... to confirm the bid prior to submission, a summary of the bid is presented to the user in

this confirmation. if confirmed, the bid will be electronically submitted to the auctioneer computer, note that in Harrington as long the auction is still open the bidders can retrieve previously submitted bid data and resubmit such bid data, see col.10 line 42 – col.11 line 5, the examiner contends that users/bidders as mentioned in Harrington reads on the telecommunication providers as recited in the claim – since Harrington's users/bidders can be anybody). Thus, it would have been obvious to one of ordinary skill in the art to combine the teachings of Taylor and Harrington to make sure that telecommunication service providers are properly compensated for the services they produce and to allow the telecommunication service providers to correct the current proposed bid.

Re claims 47-49. Taylor further discloses a method in which the processed bid data includes Provider designation data (i.e., Returning to FIG. 3, control is then transferred to parse bid request 304 in which the necessary data for costing the telephone call is extracted from the appropriate fields of bid request, see col.7 lines 26-30, also see "In general however, assemble bid request block 403 will generate a data structure which includes all of the information required by the bidding service center", see col.7 lines 60-65).

Re claim 50. Taylor further discloses a method in which the moderating computer, or a computer adjunct to the moderating computer transmits at least a portion of the Provider designation data to at least one telecommunication switch or to a computer adjunct to the at least one telecommunication switch, for use in routing at least one call attempt (i.e., After the bid request is transmitted, the originating service center

then awaits arrival of the bids from the respective bidding service centers.

First, the bid timer and bid counter (explained more fully later herein) are

both initialized at block 405. The bid timer and bid counter are intended to

inform the originating service center if and when it has all of the information

from the other bidding centers which it needs to award the job to the lowest

cost service center, see col.8 lines 1-20, also see co.3 lines 5-20, also see the abstract).

Re claim 51. Taylor further discloses a method in which the first designated Provider is

a default Provider or a contract Provider (see col.10 lines 10-28).

Re claim 53. Taylor discloses a method for creating a bidding process among

telecommunication providers in which a moderating computer collects bids from at

least two telecommunication providers, processes the bids and designates at least one

provider of the at least two telecommunication providers to provide telecommunication

service (i.e., In general however, assemble bid request block 403 will generate a data

structure which includes all of the information required by the bidding service center,

previously described in order to generate their respective bids, see col.7 lines 60-66);

a. in the Moderating computer, receiving the bids to provide telecommunication service

over at least one route, or at least one route segment, on at least one

telecommunication network, processing the bids to produce processed bid data (see

col.5 lines 19-30), and storing the bids and the processed bid data in a data base of the

Moderating computer as first bidding data (see col.8 lines 54-56, also see fig.4a

element 408)

c. in the Moderating computer, designating at least one Provider of the least two
telecommunication providers as a first designated provider to provide
telecommunication service over the at least one route or the at least one route segment,
on at least one telecommunication network (i.e., After the bid request is transmitted, the
originating service center then awaits arrival of the bids from the respective bidding
service centers. First, the bid timer and bid counter (explained more fully later herein)
are both initialized at block 405. The bid timer and bid counter are intended to inform
the originating service center if and when it has all of the information from the other
bidding centers which it needs to **award the job to the lowest cost service center.**
Specifically, and by way of example, the originating service center should award
the job to the lowest bidding service center when any of the following occurs (i) it
has received the bids from all of the service centers; (ii) the maximum time to receive
such bids has expired, even if all bids have not yet been received or (iii) any bid is
received which is below a predetermined threshold which is deemed low enough to be
acceptable. Turning to decision point 406, the bid time is calculated to be the roundtrip
time for the bid request to be transmitted from the originating center to all of the bidding
centers, and for the bidding centers to return their bids to the originating center, see
col.8 lines 1-65, also see col.9 lines 1-35, see fig.4b element 416, also see col.5 lines
19-29 "**After receiving all of the bids, the originating service center 102 compares**
the bids and selects the lowest bidding service center to make the call. An
instruction, or "contract", to make the call is sent to the lowest bidder. The information
required, including any facsimile data to be transmitted, is then sent to the lowest cost

center via the appropriate ones of dedicated lines 105-108 and 117-118 and the call is

then completed via the PSTN portion associated with the lowest cost service center.

Optionally, an acknowledgement may be sent from the lowest bidding service center to

the originating center indicating that the call has been serviced."),

d. in the moderating computer, transmitting provider designation data to at least one

telecommunication switch (see col.4 lines 10-50), and

e. in the at least one telecommunication switch, routing at least one call attempt in

accordance with the provider designation data (i.e., After the bid request is transmitted,

the originating service center then awaits arrival of the bids from the respective bidding

service centers. First, the bid timer and bid counter (explained more fully later herein)

are both initialized at block 405. The bid timer and bid counter are intended to inform

the originating service center if and when it has all of the information from the other

bidding centers which it needs to award the job to the lowest cost service center.

Specifically, and by way of example, the originating service center should award the job

to the lowest bidding service center when any of the following occurs (i) it has received

the bids from all of the service centers; (ii) the maximum time to receive such bids has

expired, even if all bids have not yet been received or (iii) any bid is received which is

below a predetermined threshold which is deemed low enough to be acceptable.

Turning to decision point 406, the bid time is calculated to be the roundtrip time for the

bid request to be transmitted from the originating center to all of the bidding centers,

and for the bidding centers to return their bids to the originating center, see col.8 lines 1-

65, also see col.9 lines 1-35). Taylor does not explicitly disclose b. in the Moderating

computer, transmitting at least a portion of the first bidding data to at least a portion of

the at least two telecommunication Providers, but Taylor does mention that the

originating service center transmits bid request to the telecommunication providers (see

col.8 lines 1-50). Thus, since bid request and bidding data are nothing but data, and

presuming the bid time is not expired, originating service center can obviously transmit

a portion of the bidding data already received from the telecommunication service

centers back to the telecommunication service centers for correction. A secondary

reference, Harrington discloses transmitting at least a portion of the first bidding data to

at least a portion of the bidders/users (i.e., after the user selects the submit button and

the bid is verified as conforming to the bid parameters, the bidder is presented with a

confirmation screen, ... to confirm the bid prior to submission, a summary of the bid is

presented to the user in this confirmation. if confirmed, the bid will be electronically

submitted to the auctioneer computer, note that in Harrington as long the auction is still

open the bidders can retrieve previously submitted bid data and resubmit such bid data,

see col.10 line 42 – col.11 line 5, the examiner contends that users/bidders as

mentioned in Harrington reads on the telecommunication providers as recited in the

claim – since Harrington's users/bidders can be anybody). Thus, it would have been

obvious to one of ordinary skill in the art to combine the teachings of Taylor and

Harrington to make sure that telecommunication service providers are properly

compensated for the services they produce and to allow the telecommunication service

providers to correct the current proposed bid.

Re claims 54-55. Taylor further discloses a method in which the Provider designation data includes designation of at least one alternate Provider (i.e., "In general however, assemble bid request block 403 will generate a data structure which includes all of the information required by the bidding service center", see col.7 lines 60-65).

Re claim 56. Taylor further discloses a method including, in the moderating computer, transmitting at least a portion of the first bidding data to at least one end user or to at least one 10 reseller (see abstract).

Re claims 57 and 58. Taylor further discloses a method comprising, in the moderating computer, receiving decision rules from an administrator associated with the moderating computer or from an administrator associated with at least one subscribing switch or from at least one end user or from at least one reseller, processing at least a portion of the first bidding data and at least a portion of the decision rules, and designating at least the first designated Provider for the provision of telecommunication service (i.e., if one or more of the bidding service centers submits a bid, the originating service compares the bids and awards the bids to the best bidder, see col.8 lines 60-65, also see col.8 line 17-col.9 line12, see fig.4a and 4b).

Re claim 59. Taylor further discloses a method in which the first designated Provider is a default Provider or a contract Provider (see col.10 lines 22-30).

Re claim 60. Taylor further discloses a method in which one or more adjunct computers perform at least a portion of the processing or communications functions of the moderating computer or the at least one telecommunication switch (see col.4 lines 10-50).

Re claim 61. Taylor further discloses a method in which the moderating computer or the at least one telecommunication switch is operated by a local access telecommunication service provider (see fig.1).

Re claim 62. Taylor further discloses a method comprising, in the moderating computer, processing the bids in accordance with bidding rules to produce processed bid data (see col.8 lines 17-66)

Re claim 63. Claim 63 recites similar limitations to claim 53 above and thus rejected using the same art and rejection as in claim 53.

Re claim 64. Taylor further discloses a method in which the first portion of the first switch data is the same as the second portion of the first switch data, or in which the first portion includes the second portion of the first switch data, or in which the first portion is included in the second portion of the first switch data (i.e., The information may be transmitted back in the form of any convenient data structure, but ideally only occupies a few bytes and results in extremely minimal overhead, see col.5 lines 10-17)

Re claim 65. Taylor further discloses a method in which the moderating computer is a computer adjunct to the first subscribing switch (i.e., center 102, see fig.1)

Re claim 66. Taylor further discloses a method in which the first subscribing switch is operated by the moderating computer, or by an administrator associated with the moderating computer, or by at least one end user, or by at least one reseller, or by a local access telecommunication service provider (i.e., a plurality of service centers, see abstract, see col.4 lines 24-26, also see fig.1).

Re claim 67. Taylor further discloses a method comprising, in the first subscribing switch, receiving decision rules from an administrator associated with the moderating computer or from an administrator associated with the first subscribing switch or from at least one end user or from at least one reseller, processing at least the second portion of the first switch data and at least a portion of the decision rules, and designating at least the first designated Provider for the provision of telecommunication service (see fig.4a and 4b, also see col.8 line 17-col.9 line12).

Re claim 69. Taylor further discloses a method in which the first subscribing switch designates at least one alternate Provider (i.e., service centers can subcontract out the job by competitively bidding it among a plurality of local nodes, see col.10 lines 23-30).

Re claim 70. Taylor further discloses a method in which the moderating computer or the first subscribing switch transmits at least the first portion of the first switch data to at least a portion of the at least two telecommunication Providers subsequent to the first subscribing switch designating the first designated Provider to provide telecommunication service (i.e., In general however, assemble bid request block 403 will generate a data structure which includes all of the information required by the bidding service center, previously described in order to generate their respective bids. Once the bid request is assembled, it is transmitted to the bidding service center at block 404. After the bid request is transmitted, the originating service center then awaits arrival of the bids from the respective bidding service centers, see col.7 line 60-col.8 line 3).

Re claim 71. Taylor further discloses a method in which at least a portion of the processing or communications functions of the moderating computer or the first subscribing switch is performed by one or more adjunct computers (see col.4 lines 10-50).

Re claims 82-83. Claims 82-83 recite similar limitations to claim 53 and thus rejected using the same art and rationale as in claim 53 supra.

Re claim 84. Claim 84 recites similar limitations to claim 64 and thus rejected using the same art and rationale as in claim 64 supra.

Re claim 85. Claim 85 recites similar limitations to claim 70 and thus rejected using the same art and rationale as in claim 70 supra.

Re claim 86. Claim 86 recites similar limitations to claim 50 and thus rejected using the same art and rationale as in claim 50 supra.

Re claim 87. Taylor further discloses a method in which at least a portion of the bidding process of Steps a. through f. is conducted in accordance with bidding rules (see col.8 lines 17-66).

Re claim 88. Claim 88 recites similar limitations to claim 53 and thus rejected using the same art and rationale as in claim 53 supra.

Re claims 90-91. Taylor further discloses a method in which the Provider designation data includes designation of the first designation provider (i.e., Returning to FIG. 3, control is then transferred to parse bid request 304 in which the necessary data for costing the telephone call is extracted from the appropriate fields of bid request, see col.7 lines 26-30, also see "In general however, assemble bid request block 403 will

generate a data structure which includes all of the information required by the bidding

service center", see col.7 lines 60-65).

Re claim 92. Claim 92 recites similar limitations to claim 50, and thus rejected using the

same art and rationale as in claim 50 supra.

Re claim 93. Taylor further discloses a method in which the designating of the first

designated Provider is performed by the moderating computer, by the at least one

telecommunication switch , by the computer adjunct to the moderating computer, or by

the computer adjunct to the at least one telecommunication switch (i.e., if one or more

of the bidding service centers submits a bid, the originating service compares the bids

and awards the bids to the best bidder see col.8 lines 60-65, also see col.8 line 17-col.9

line12, see fig.4a and 4b)

Re claim 94. Taylor further discloses a method in which at least a portion of the

processed bid information is distributed to at least a portion of the at least two

telecommunication Providers subsequent to the designating of the first designated

Provider to provide telecommunication service (i.e., In general however, assemble bid

request block 403 will generate a data structure which includes all of the information

required by the bidding service center, previously described in order to generate their

respective bids. Once the bid request is assembled, it is transmitted to the bidding

service center at block 404. After the bid request is transmitted, the originating service

center then awaits arrival of the bids from the respective bidding service centers, see

col.7 line 60-col.8 line 3, also see fig.4a element 414, also see fig.4b element 416).

Re claim 95. Claim 95 recites similar limitations to claim 87, and thus rejected using the same art and rationale as in claim 87 supra.

Re claim 96. Taylor further discloses a method in which each of Steps a. - f. is accomplished by means of computer processing (see fig.1).

Re claim 97. Claim 97 recites similar limitations to claim 57, and thus rejected using the same art and rationale as in claim 57 supra.

Re claims 98-101. Taylor discloses the generation of a bid request data, transmission of the request data, and the reception of said request data (see fig.3, also col.4 line 60-col.5 line10), but discloses not explicitly how this bid request data is generated i.e., Taylor does not explicitly disclose a method in which the Buyer submits the request to a moderating computer by entering request data into a first software defined template residing on a computer bulletin board system, or on a website. However, data entry into a software template on a website is old and well known in the art. Thus it would have been obvious to one of ordinary skill in the art to incorporate what is old and well into Taylor to provide a remote platform for buyer to put in their request.

Re claims 102-103. Taylor does not explicitly disclose a method in which a moderating computer, or a computer adjunct to the moderating computer, distributes at least a portion of the processed bid information to at least a portion of the at least two telecommunication Providers but Taylor does mention that the originating service center transmits bid request to the telecommunication providers (see col.8 lines 1-50). Thus, since bid request and bidding data are nothing but data, and presuming the bid time is not expired, originating service center can obviously transmit a portion of the bidding

data already received from the telecommunication service centers back to the

telecommunication service centers for correction. A secondary reference, Harrington

discloses transmitting at least a portion of the first bidding data to at least a portion of

the at least two telecommunication Providers (i.e., after the user selects the submit

button and the bid is verified as conforming to the bid parameters, the bidder is

presented with a confirmation screen, ... to confirm the bid prior to submission, a

summary of the bid is presented to the user in this confirmation. if confirmed, the bid will

be electronically submitted to the auctioneer computer, note that in Harrington as long

the auction is still open the bidders can retrieve previously submitted bid data and

resubmit such bid data, see col.10 line 42 – col.11 line 5, also note that bidders as

disclosed by Harrington constitute the telecommunication providers as disclosed by the

applicant). Thus, it would have been obvious to combine the teachings of Taylor and

Harrington to make sure that telecommunication service providers are properly

compensated for the services they produce and to allow the telecommunication service

providers to correct the current proposed bid.

Re claims 118-121, and 123. Taylor further discloses a Moderator including means for

distributing the processed request to at least a portion of the plurality of

telecommunication Providers (i.e., In general however, assemble bid request block 403

will generate a data structure which includes all of the information required by the

bidding service center, previously described in order to generate their respective bids.

Once the bid request is assembled, it is transmitted to the bidding service center at

block 404. After the bid request is transmitted, the originating service center then awaits

arrival of the bids from the respective bidding service centers, see col.7 line 60-col.8 line

3, also see fig.4a element 414, also see fig.4b element 416) except for posting the

processed request on a computer bulletin board system or on a website accessible to at

least a portion of the plurality of telecommunication Providers. However, data entry into

a software template on a website and posting of said data online is old and well known

in the art. Thus it would have been obvious to one of ordinary skill in the art to

incorporate what is old and well into Taylor to provide a remote platform for providers to

see the outcome of their bidding.

   (10) Response to Argument

   In response to the appellant's argument regarding the 35 U.S.C 103 (a)

rejections of claims 46, 53, 63, 82, and 88. The appellant argues in substance that

neither Taylor nor Harrington discloses the transmission of "bidding data" to at least two

telecommunication providers. It is true that Taylor is silent on this limitation, but Taylor

does mention that the originating service center transmits bid request to the

telecommunication providers (i.e., assemble bid request block 403 will generate a data

structure which includes all of the information required by the bidding service center,

previously described in order to generate their respective bids. Once the bid request is

assembled, it is transmitted to the bidding service center at block 404. After the bid

request is transmitted, the originating service center then awaits arrival of the bids from

the respective bidding service centers, see col.7 line 60-col.8 line 50). Thus, since bid

request and bidding data are nothing but data, and presuming the bid time is not

expired, the originating service center can obviously transmit a portion of the bidding

data already received from the telecommunication service centers back to the

telecommunication service centers for correction. Further, a secondary reference,

Harrington discloses transmitting at least a portion of the first bidding data to at least a

portion of the bidders/users (i.e., after the user selects the submit button and the bid is

verified as conforming to the bid parameters, the bidder is presented with a confirmation

screen, ... to confirm the bid prior to submission, a summary of the bid is presented to

the user in this confirmation. if confirmed, the bid will be electronically submitted to the

auctioneer computer, **note that in Harrington as long the auction is still open the**

bidders can retrieve previously submitted bid data and resubmit such bid data,

see col.10 line 42 – col.11 line 5, the examiner contends that users/bidders as

mentioned in Harrington reads on the telecommunication providers as recited in the

claim – since Harrington's users/bidders can be anybody). Thus, it would have been

obvious to one of ordinary skill in the art to combine the teachings of Taylor and

Harrington to make sure that telecommunication service providers are properly

compensated for the services they produce and to allow the telecommunication service

providers to correct the current proposed bid. The examiner respectfully submits that

the motivation for the combination of Taylor's and Harrington's teachings can be found

on col.11 lines 1-5 of Harrington.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the

Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/OJO O OYEBISI/

Examiner, Art Unit 3696

Conferees:

/THOMAS A DIXON/

Supervisory Patent Examiner, Art Unit 3696

Vincent Millin /VM/

Appeals Practice Specialist